BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NOS. 2019-185-E and 2019-186-E

South Carolina Energy Freedom Act (H.3659) Proceeding to Establish Duke Energy Carolinas, LLC's Standard Offer, Avoided Cost Methodologies, Form Contract Power Purchase Agreements, Commitment to Sell Forms, and any other Terms or Conditions Necessary (Includes Small Power Producers as Defined in 16 United States Code 796, as Amended) – S.C. Code Ann. Section 58-41-20(A) – 2019-185-E and South Carolina Energy Freedom Act (H.3659) Proceeding to Establish Duke Energy Progress, LLC's Standard Offer, Avoided Cost Methodologies, Form Contract Power Purchase Agreements, Commitment to Sell Forms, and any other Terms or Conditions Necessary (Includes Small Power Producers as Defined in 16 United States Code 796, as Amended) – S.C. Code Ann. Section 58-41-20(A) – 2019-186-E	**DUKE ENERGY CAROLINAS, LLC'S AND DUKE ENERGY PROGRESS, LLC'S PARTIAL PROPOSED ORDER ON REHEARING AND RECONSIDERATION**

This matter comes before the Public Service Commission of South Carolina ("Commission" or "PSC") upon the timely Petitions for Rehearing or Reconsideration filed pursuant to S.C. Code Ann. § 58-27-2150 and S.C. Code Regs. 103-825. On January 2, 2020, the Commission issued Order No. 2019-881(A) (the "Order"), establishing Duke Energy Carolinas, LLC's ("DEC") and Duke Energy Progress, LLC's ("DEP" and, together with DEC the "Companies" or "Duke") avoided cost methodology, standard offer avoided cost rates, form

contract power purchase agreements ("PPAs"), commitment to sell forms, and standard terms and conditions.

On January 13, 2020, Petitions for Rehearing or Reconsideration of Order No. 2019-881(A) were timely filed by (1) Duke; (2) Johnson Development Associates, Inc. and the South Carolina Solar Business Alliance, Inc. ("JDA/SCSBA"); and (3) the Southern Alliance for Clean Energy and the South Carolina Coastal Conservation League ("SACE/CCL"). On January 22, 2020, the Companies filed a Response to JDA/SCSBA and SACE/CCL's Petitions for Rehearing or Reconsideration. JDA/SBA and SACE/CCL also filed a Response to the Companies' Petition for Rehearing or Reconsideration on that same date. ORS filed a letter responding to certain portions of the Companies and SACE/CCL's respective Petitions for Rehearing or Reconsideration.

Petitioners raise similar issues for the Commission to rehear or reconsider, and, therefore, their respective Petitions are properly addressed in a single Commission order (the instant "Order on Reconsideration and Rehearing"). Based upon a full review of the written arguments presented by the parties and the record in this case, the Commission has determined that certain modifications to Order No. 2019-881(A) are warranted. This Order on Reconsideration and Rehearing sets out the Commission's modifications to Order. No. 2019-881(A), and, to the extent that any rulings within this Order on Reconsideration and Rehearing conflict with Order No. 2019-881(A), this instant Order supersedes the prior Order. Otherwise, the Commission's findings and conclusions presented in Order No. 2019-881(A) not specifically addressed in this Order on Reconsideration and Rehearing are amply supported by the evidence of record in these proceedings. The Commission's findings and conclusions in Order No. 2019-881(A), as modified herein, are fully

consistent with Act 62, supported by substantial evidence, and based upon the entire record of this case.

STANDARD OF REVIEW

The purpose of a petition for rehearing and reconsideration is to allow the Commission to identify and correct specific alleged errors and omissions in its prior rulings. Under the operative Commission regulation, S.C. Code Ann. Reg. 103-825(A)(4):

> A Petition for Rehearing or Reconsideration shall set forth clearly and concisely:
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> (a) The factual and legal issues forming the basis for the petition;
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> (b) The alleged error or errors in the Commission order;
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> (c) The statutory provision or other authority upon which the petition is based.

Conclusory statements and general and non-specific allegations of error do not satisfy the requirements of the rule. *See In re S.C. Pipeline Co.*, Docket No. 2003-6-G, Order No. 2003-641, at 6 ("[A] conclusory statement based upon speculation and conjecture is no evidence at all and is legally insufficient to support a [petition for reconsideration]"). While the requirement of specificity in post-trial motions is interpreted with flexibility, at minimum the decision-making body must be "able to both comprehend the motion and deal with it fairly." *See Camp v. Camp*, 386 S.C. 571, 575, 689 S.E.2d 634, 636 (2010). Additionally, a party cannot raise issues in a motion to reconsider that were not raised during the proceeding. *See Kiawah Prop. Owners Group v. Pub. Serv. Comm'n*, 359 S.C. 105, 113, 597 S.E.2d 145, 149 (2004); *Hickman v. Hickman*, 301 S.C. 455, 456, 392 S.E.2d 481, 482 (Ct. App. 1990); *Patterson v. Reid*, 318 S.C. 183, 185, 456 S.E.2d 436, 437 (Ct. App. 1995).

COMMISSION FINDING AND CONCLUSIONS ON ALLEGED ERRORS

A. The Commission did not improperly consider aspects of the Power Advisory Report in its Order and Duke's request to strike portions of the Report is denied.

Act 62 directs the Commission to engage "a qualified independent third party to submit a report that includes the third party's independently derived conclusions as to that third party's opinion of each utility's calculation of avoided costs." S.C. Code Ann. § 58-41-20(I). On November 1, 2019, the Commission's independent third party consultant, Power Advisory, filed its Report with the Commission ("Power Advisory Report" or "Report). The Power Advisory Report was submitted after the evidentiary hearing in these proceedings; however, the Commission allowed parties to submit comments in response to the Power Advisory Report. The Companies and other parties submitted written comments in response to the Power Advisory Report on November 8, 2019. Duke's comments specifically expressed concerns about the Commission relying upon certain information and conclusions presented in Sections 4.1.1, 4.1.3, 4.4.1, and 4.4.2 of the Power Advisory Report, because Power Advisory's conclusions in these sections were not properly based upon evidence submitted in the case. Duke's concerns were grounded upon due process considerations and the fact that Act 62 expressly directs that "[a]ny conclusions [of the consultant] *based on the evidence in the record* and included in the report *are intended to be used by the commission* along with all other evidence submitted during the proceeding *to inform its ultimate decision setting the avoided costs* for each electrical utility." S.C. Code Ann. § 58-41-20(I) (emphasis added).

The Companies' Petition now requests the Commission to expressly make a determination that Sections 4.1.1, 4.1.3, 4.4.1, and 4.4.2 of the Power Advisory Report should be stricken from the Report as contrary to law and that the Commission should modify the Order so as not to rely upon any of these provisions of the Power Advisory Report. JDA/SCSBA and SACE/CCL both

oppose Duke's request, arguing that the Commission did not, in fact, improperly rely upon the Sections of the Power Advisory Report proposed by Duke to be stricken and that Duke's request to strike portions of the Power Advisory Report is untimely and overbroad. SACE/CCL Response, at 3-6; JDA/SCSBA Response, at 3-6. JDA/SCSBA also allege that the Commission could have taken judicial notice of the facts and documents presented in the Power Advisory Report, which Duke alleges were improperly not based upon evidence in the record. JDA/SCSBA Response, at 2.

The Commission finds that Order No. 2019-881(A) does not improperly rely upon the sections of the Power Advisory Report that Duke requests to be stricken from the Report; therefore, Duke's request should be denied. Power Advisory's role in these proceedings is to "submit a report that includes the third party's independently derived conclusions" in order "to inform [the Commission's] ultimate decision setting the avoided costs for each electrical utility." *See* S.C. Code. Ann. § 58-41-20(I). The Commission finds that, in this case, it is not necessary to strike the portions of Power Advisory's full Report as identified by Duke given that the Commission's decision is not reliant upon the sections cited by Duke. The Commission notes that motions to strike are the appropriate legal mechanism to contest a portion of a consultant's report, particularly before an evidentiary hearing occurs.

Duke appropriately recognizes that Act 62 imposes the same ex parte prohibitions on Power Advisory as all other parties, and, further, that the Commission's consideration of Power Advisory's independently-derived conclusions must be "based on the evidence in the record. . . to be used by the commission . . . to inform its ultimate decision setting the avoided costs . . ." *See* S.C. Code Ann. § 58-41-20(I). While Act 62 is clear on these procedural matters, the Commission does not find that the relief requested by Duke is necessary or appropriate. First, the Commission's

findings and conclusions presented in Order No. 2019-881(A) are not inconsistent with these requirements of Act 62 because the Commission did not improperly use or rely upon the sections of the Power Advisory Report proposed to be stricken by Duke. Duke also has not challenged any of the Commission's conclusions as being improperly based upon information included in the Sections of the Power Advisory Report Duke proposes to strike. For the avoidance of doubt, and in the interest of transparency, the Commission's extensive findings and conclusions presented in Order No. 2019-881(A) were based upon substantial evidence in the record, and the Commission does not find that its Order improperly relied upon Sections 4.1.1, 4.1.3, 4.4.1, and 4.4.2 of the Power Advisory Report. The Commission also agrees with the arguments of SACE/CCL and JDA/SCSBA that striking these entire Sections of the Power Advisory Report would be overbroad. Finally, the Commission agrees with SACE/CCL that a motion to strike sections of the Power Advisory Report could have been more timely presented after the Report was submitted to the Commission and prior to the Commission issuing Order No. 2019-881(A), similar to the motion filed by Dominion Energy South Carolina on November 8, 2019 in Docket No. 2019-184-E.

Based upon the foregoing, the Commission denies Duke's request and, therefore, does not need to reach a decision upon whether Power Advisory improperly relied upon information not in the record of these proceedings in contravention of S.C. Code. Ann. § 58-41-20(I), or whether judicial notice of the information and documents reference in Sections 4.1.1, 4.1.3, 4.4.1, and 4.4.2 of the Power Advisory Report would have been proper.

B. The Order appropriately considers the evidence in the record and strives to reduce the risks placed upon the using and consuming public, as required by Act 62.

JDA/SCSBA's and SACE/CCL's respective Petitions argue that the Order fails to fully recognize and account for the risks and benefits of independently-owned QF generation relative to utility-owned generation. These parties argue that the Commission unduly relied upon testimony

regarding the "overpayment risk" associated with longer-term fixed price contracts and failed to fully recognize the benefits of QF generation, *see* SACE/CCL Petition, at 5-6, as well as failed to "heed the core directives of Act 62" to promote independent renewable energy development under PURPA. JDA/SCSBA Petition, at 8.

JDA/SCSBA acknowledge that the potential for overpayment risk from QF solar purchases is an appropriate consideration for the Commission but dispute the Order's "narrow scope on the topic." *Id.* at 40. JDA/SCSBA therefore request the Commission reconsider the risk profile of QF solar in light of the utility's overall system characteristics and how QF solar impacts both the generation investments and operating characteristics of utility-owned solar. *Id.* Both JDA/SCSBA and SACE/CCL additionally argue that the Commission failed to specifically address the Power Advisory Report's discussion of overpayment risk and to recognize SACE/CCL's cross-examination and late-filed exhibit on the benefits of independently-developed renewable energy generation relative to utility-owned generation. SACE/CCL Petition, at 5-6; JDA/SCSBA Petition, at 40.

In response, Duke contends that these parties' Petitions should be rejected as a matter of law because neither JDA/SCSBA nor SACE/CCL specifically identify any findings and conclusions that were improperly decided or were not supported based upon substantial evidence. Duke states that based on the totality of the Petitions, it appears that JDA/SCSBA's and SACE/CCL's real objective in raising these issues is to persuade the Commission to "promote the development of solar QFs" by arbitrarily increasing the avoided cost rates approved in the Order. Duke Response, at 11-12. Duke therefore argues that these parties' arguments should be denied as a matter of law. *Id.*

Additionally, Duke rebuts these parties' claims regarding the Order's weighing of Power Advisory's findings and the specific SACE/CCL testimony on this issue, arguing that the Commission addressed SCSBA witness Davis' and JDA witness Chilton's similar testimony, which questions the overpayment risks of QF purchase raised by Duke as well as highlighted the benefits of independently-owned renewable QF generation relative to utility-owned generation. Duke Response, at 11 citing to Order No. 2019-881(A), at 37-38, 42.

Having reviewed JDA/SCSBA and SACE/CCL's Petitions, Duke's Response, and the entire record herein, the Commission finds that Order No. 2019-881(A) appropriately weighs the risks and benefits associated with both third-party owned generation and utility-owned generation, and has complied with Act 62's directive to strive to reduce the risks placed on the using and consuming public in setting avoided cost rates in these proceedings. Accordingly, JDA/SCSBA and SACE/CCL's Petitions on this issue are denied.

As an initial matter, the Order clearly recognizes the extensive conflicting testimony on the issue of what risks the Commission should consider and how the Commission should consider such risks to meet Act 62's mandate to "strive to reduce the risk placed on the using and consuming public." Order No. 2019-881(A), at 35- 40 citing S.C. Code Ann. § 58-41-20(A). The Order also appropriately explains how the Commission "carefully reviewed the extensive testimony in the record as it relates to how Duke, on the one hand, and the solar industry intervenors, on the other, advocate that the Commission view the requirements of Act 62 to strive to reduce the risk placed on the using and consuming public in deciding the issues before the Commission in this proceeding." *Id.,* at 41.

SACE/CCL argue that the Commission failed to specifically address the Power Advisory Report's discussion of Duke's quantification of future overpayment risk and to recognize

SACE/CCL's cross examination and late-filed exhibit on the benefits of independently-developed renewable energy generation relative to utility-owned generation. SACE/CCL Petition, at 5-6. While the Order does not specifically address Power Advisory's findings and the specific testimony that SACE/CCL now highlights on these issues, the Order does address SCSBA witness Davis' and JDA witness Chilton's similar testimony on these issues. Order No. 2019-881(A), at 37-38, 42. The Order does not disregard this evidence. To the contrary, the Order finds that evidence in the record shows that "[r]isks exist with both longer-term fixed price contracts paid to QFs under PURPA as well as with traditional utility generating resources." Order No. 2019-881(A), at 27 (emphasis added). Accordingly, the Commission's findings and conclusions outlined in the Order reasonably and fairly considered the testimony now raised by SACE/CCL.

Moreover, the Commission did not unduly rely upon the overpayment risk testimony presented by Duke in its ultimate findings and conclusions. As discussed in the Order, the Commission found as a matter of law that the risks to be considered in these proceedings are tied to the Commission's responsibility under Act 62 to implement the avoided cost requirements of PURPA, and that the Commission's ultimate conclusion after weighing these risks has effectively been predetermined by the General Assembly under Act 62. Order No. 2019-881(A), at 41. The Order explains that the "Commission is following the General Assembly's mandate to approve fixed 10-year contract terms as reasonably balancing the over-payment risks for consumers of longer-term fixed price avoided cost contracts and the General Assembly's goal of promoting renewable energy while fully and accurately calculating DEC's and DEP's avoided costs." Order No. 2019-881(A), at 44. The Commission appropriately considered and weighed the evidence presented by all parties on the issue of "striv[ing] to reduce the risk placed on the using and consuming public," as required by of S.C. Code Ann. § 58-41-20(A), and ultimately determined

that the General Assembly had predetermined the risks to be assigned to customers by initially fixing the avoided cost rates and contracts offered to QFs for a period of 10 years. The Order also emphasizes the Commission's obligation under Act 62 to fix rates that fully and accurately reflect each utility's avoided costs, and recognizes that the Commission cannot lawfully approve rates that exceed avoided costs under PURPA. S.C. Code Ann. § 58-41-20(A), (B). The Commission's legal conclusions in this regard are fully supported by Act 62, and neither JDA/SCSBA nor SACE/CCL present any legal or policy arguments to the contrary.

Finally, the Commission agrees with Duke that SACE/CCL's and JDA/SCSBA's Petitions are legally deficient, as neither Petitioner effectively explains how the Commission's Order arrived at conclusions on this issue that were either not supported by the evidence or that were contrary to law. In considering post-hearing Motions, the decision-making body must be "able to both comprehend the motion and deal with it fairly." See *Camp v. Camp*, *supra*. On the face of their respective Petitions, it is unclear what relief SACE/CCL and JDA/SCSBA seek in raising this issue. Accordingly, the Commission rejects these parties' Petitions with respect to this issue as legally deficient and failing to meet the standards outlined in 10 S.C. Code Ann. Reg. 103-825(4).

Based upon the foregoing and entire evidence presented throughout this proceeding, the Commission denies SACE/CCL's and JDA/SCSBA's requests for reconsideration on this issue, and affirms Order No. 2019-881(A)'s findings and conclusions regarding the risks placed on the using and consuming public in setting avoided cost rates, as required by Act 62.

C. JDA/SCSBA's request for the Commission to reconsider the capital cost of an aeroderivative CT unit when calculating the avoided capacity rate is denied.

JDA/SCSBA argue that the Commission failed to properly weigh the evidence and committed errors in rejecting SCSBA witness Burgess' proposal to use the midpoint price between an aeroderivative CT and a F-Frame CT to calculate Duke's avoided capacity costs under the

peaker methodology. JDA/SCSBA Petition, at 29. JDA/SCSBA allege that the Commission incorrectly found that "there is simply no basis to conclude that DEC or DEP are planning to construct aero-derivative CTs in the current 15-year planning period." *Id*. citing Order No. 2019-881(A), at 102. In support of their argument for reconsideration by the Commission, JDA/SCSBA argue that the Commission "disregarded the fact that the IRP upon which the Companies rely [to support utilization of the F-Frame CT] has never been reviewed or approved by the Commission pursuant to the specific requirements of Act 62." JDA/SCSBA Petition, at 29.

Second, JDA/SCSBA argue that the Commission erred in agreeing with Duke and Power Advisory that "the increased costs of constructing aeroderivative CTs would be caused by the intermittency and volatility of solar," and that "it would therefore be inappropriate" to use an aeroderivative CT for purposes of determining avoided capacity costs. *Id*. To support this alleged error, JDA/SCSBA state that "[c]ontrary to the assertions of Duke and Power Advisory, the decision to construct an aeroderivative CT unit would not solely serve as a means of integrating solar QFs, but would instead provide a valuable asset that would serve a variety of operational and economic purposes." JDA/SCSBA Petition, at 30.

In response to JDA/SCSBA's first alleged error, Duke responds that "[n]owhere in the record evidence…does Mr. Burgess, or JDA/SCSBA, allege that Duke's utilization of the F-Frame CT to calculate avoided capacity costs is somehow inaccurate or inappropriate because the Commission has 'not approved' Duke's IRP or the F-Frame CT costs contained therein." Duke Response, at 25. Thus, Duke contends that JDA/SCSBA improperly raise new arguments in support of their Petition not previously raised throughout this proceeding. Duke additionally contends that JDA/SCSBA ignore the substantial evidence put forth by Duke and the recommendations of the Power Advisory Report, as providing the basis for the Commission's

conclusion that the F-Frame CT cost is reasonable. In support of this contention, Duke cites to record evidence indicating that Duke currently has F-Frame CTs installed on its system today, and that Duke is currently not projecting the need to build aeroderivative CTs. *Id.* at 25-26. Duke also cites to the Power Advisory Report finding the testimony put forth by Mr. Snider reasonable, and supporting Duke's utilization of an F-Frame CT for purposes of calculating avoided capacity costs. *Id.*

In response to JDA/SCSBA's second alleged error, Duke states that JDA/SCSBA again fail to cite to any record evidence in support of their claim that "the decision to construct an aeroderivative …would instead provide a valuable asset that would serve a variety of operational and economic purposes." Duke Response, at 26. Duke notes that JDA/SCSBA, instead, cite to a Duke Energy website for the first time, to "leap to the completely unsupported conclusion" that it would be appropriate to utilize an aeroderivative CT for purposes of calculating avoided capacity costs. *Id.* at 26-27. Duke further asserts that JDA/SCSBA also ignore the substantial evidence put forth by both Duke witness Snider and Power Advisory explaining why aeroderivative CTs, even assuming Duke were planning to build an aeroderivative CT and procure significant amounts of non-PURPA solar in the future, are not appropriate to use as the "peaker" unit under the peaker methodology. *Id.* at 27. In conclusion, Duke contends that the Commission should reject JDA/SCSBA's Petition on this issue as it raises novel arguments in support of reconsideration not properly before the Commission, and ignores substantial evidence put forth by both Power Advisory and Duke and included in the Commission's Order providing the basis for rejection of Mr. Burgess' aeroderivative CT proposal.

Having reviewed JDA/SCSBA's Petition, Duke's Response, and the entire record herein, the Commission denies JDA/SCSBA's Petition for Reconsideration on this issue. First, the

Commission agrees with Duke that JDA/SCSBA failed to timely take issue with the fact that Duke's IRPs supporting utilization of the F-Frame CT have not yet been reviewed or approved by the Commission pursuant to the newly-enacted requirements of Act 62. JDA/SCSBA Petition, at 29. As Duke explained in its Response, "[n]owhere in the record evidence…does Mr. Burgess, or JDA/SCSBA, allege that Duke's utilization of the F-Frame CT to calculate avoided capacity costs is somehow inaccurate or inappropriate because the Commission has 'not approved' Duke's IRP or the F-Frame CT costs contained therein." Duke Response, at 25. A party cannot use reconsideration to present to the Commission an issue the party could have raised during the proceeding but did not. *See Kiawah Prop. Owners Group v. Pub. Serv. Comm'n,*359 S.C. 105, 113, 597 S.E.2d 145, 149 (2004); *Hickman v. Hickman,* 301 S.C. 455, 456, 392 S.E.2d 481, 482 (Ct. App. 1990); *Patterson v. Reid,* 318 S.C. 183, 185, 456 S.E.2d 436, 437 (Ct. App. 1995). Accordingly, JDA/SCSBA's allegation that the Commission "erred" in finding that there was no basis to conclude that Duke was planning to construct aeroderivative CTs fails to meet the standard outlined in 10 S.C. Code Ann. Reg. 103-825(4) and must be denied on those grounds alone. Moreover, the Commission's determination on this issue is supported by substantial evidence in the record, as Duke's uncontroverted testimony was that the Companies are not planning to construct an aeroderivative CT under their current IRPs. *See* Order No. 2019-881(A), at 97-98.

In addition, the Commission agrees with Duke that JDA/SCSBA also fail to cite record evidence in support of their contention that "the decision to construct an aeroderivative …would instead provide a valuable asset that would serve a variety of operational and economic purposes." JDA/SCSBA Petition, at 30. JDA/SCSBA's Petition provides no record evidence supporting this conclusion. Conclusory statements that amount to general and non-specific allegations of error do not satisfy the requirements of 10 S.C. Code Ann. Reg. 103-825(4). *See In re S.C. Pipeline*

Co., Docket No. 2003-6-G, Order No. 2003-641, at 6 ("[A] conclusory statement based upon speculation and conjecture is no evidence at all and is legally insufficient to support a [petition for reconsideration]."). Therefore, JDA/SCSBA's Petition with respect to its request for reconsideration of Mr. Burgess' aeroderivative CT proposal fails under 10 S.C. Code Reg. § 103-825(d), and is denied as a matter of law.

Having denied JDA/SCSBA's Petition to reconsider the rejection of Mr. Burgess' alternative aeroderivative CT proposal, the Commission affirms the Order's findings and conclusions approving Duke's utilization of the Energy Information Administration F-Frame CT capacity costs for purposes of calculating the Companies' avoided capacity rates. Substantial evidence supports the Commission's rejection of Mr. Burgess' aeroderivative CT proposal and approval of utilization of an F-Frame CT for purposes of calculating avoided capacity rates as reasonable and appropriate.

D. The Commission's adoption of ORS's recommended seasonal allocation weightings is supported by substantial evidence and reconsideration is denied.

Both SACE/CCL and JDA/SCSBA challenge the Commission's findings and conclusions on seasonal allocation of capacity value, and request the Commission reconsider its determination to adopt ORS witness Horri's recommended 99%/1% winter/summer seasonal allocation for DEP and 70%/30% winter/summer seasonal allocation for DEC. These Petitioners argue that substantial evidence in the record does not support the Commission's conclusions, pointing to SACE/CCL witness Wilson and SCSBA witness Burgess' criticism of Duke's Solar Capacity Value Study and Resource Adequacy Study underlying the utilities' respective forecasted seasonal capacity needs. *See* SACE/CCL Petition, at 19; JDA/SCSBA Petition, at 28.

SACE/CCL specifically request the Commission to "default to the seasonal allocation previously approved by the Commission on May 4, 2016 in Docket No. 1995-1192-E."

SACE/CCL Petition, at 20-21. JDA/SCSBA, on the other hand, request the Commission adopt Mr. Burgess' recommended seasonal allocation weightings of 96%/4% winter/summer for DEP and 42%/58% winter/summer for DEC. JDA/SCSBA Petition, at 28.

In response, Duke argues that the Commission's Order is based upon substantial evidence and that SACE/CCL and JDA/SCSBA fail to show that the Commission's Order is clearly erroneous. Duke Response, at 27-28. Duke describes the Order's extensive discussion of the evidence presented by Duke witness Snider, ORS witness Horii, SCSBA witness Burgess, as well as SACE/CCL witness Wilson on the issue of the appropriate seasonal allocation of capacity value between winter and summer periods, citing to pages 103-112 of Order No. 2019-881(A). *Id*. Duke explains that the Order reasonably supports the Commission's determination that ORS's position is most appropriately "based on current conditions" and explains that ORS witness Horii accepted the Companies' loss of load expectation ("LOLE") approach to quantifying avoided capacity value. *Id.* citing Order No. 2019-881(A), at 103, 112.

Duke also contends that in adopting ORS witness Horii's recommendation, the Commission appropriately weighed the criticisms of Duke's Resource Adequacy Study and Solar Capacity Value Study raised by SACE/CCL witness Wilson and SCSBA witness Burgess, and necessarily found that Duke's underlying studies were not "flawed," citing Order No. 2019-881(A), at 106, 107-108. *Id.* Duke states that the Commission's determination regarding ORS' adjustments to Duke's analysis to rely upon "current conditions" best represented the current value of capacity on the DEC and DEP systems. *Id.* at 28-29, citing Order No. 2019- 881(A), at 106, 107-108. Although Duke notes that the Commission did not explicitly identify the Power Advisory Report's discussion and findings on the seasonal allocation issue, Duke contends that Power Advisory's conclusions are fully consistent with the Commission's determination. *Id.* citing to

Power Advisory Report, at 27 ("Power Advisory believes that the capacity weightings proposed by Mr. Horii in his surrebuttal testimony are reasonable and that the Companies should be directed to update their avoided capacity rates to reflect these ratings. . . . Power Advisory believes the LOLE studies used by Duke [and also relied upon by ORS witness Horii] are an appropriate methodology to assess the seasonal contribution of capacity."). Therefore, Duke argues the Commission should reject SACE/CCL and JDA/SCSBA's requests for the Commission to reweigh the evidence. *Id.* at 28-29.

Having reviewed the record evidence in this proceeding and the parties' Petitions on this issue, the Commission finds that substantial evidence exists supporting the Commission's approval of ORS witness Horii's seasonal allocation proposal, and that Petitioners fail to show how the Commission committed an error of law or failed to base its decision on substantial evidence in the record. Accordingly, the Commission finds that SACE/CCL and JDA/SCSBA's Petitions should be denied as they do not demonstrate any error or omission by the Commission.

SACE/CCL and JDA/SCSBA's Petitions merely provide a summary of the record evidence supporting each of their respective positions and request the Commission to reweigh the evidence and to modify its original conclusion on this issue. These Petitioners, however, ignore the substantial evidence put forth by ORS and Duke as well as the Power Advisory Report supporting approval of Mr. Horii's recommendation as discussed in the Commission's Order. The Order recognizes ORS witness Horii's testimony that Duke's reliance on the LOLE analysis and methodological approach to determining future capacity needs is appropriate in the context of determining when a QF can help a utility avoid or defer a planned capacity addition. *See* Order No. 2019-881(A), at 103. In addition to explicitly agreeing with Duke's reliance on LOLE data, ORS witness Horii accepted every other aspect of Duke's seasonal allocation of capacity value

analysis, except for Duke's use of the future "Tranche 4" solar data versus relying upon current conditions. *Id.* As stated at pages 112-113 of Order No. 2019-881(A), "the Commission [found that] the preponderance of the evidence in the record supports a finding consistent with ORS witness Horii's position on this issue and [that] his position is just and reasonable." The Order therefore properly supported the LOLE methodology underlying Duke's proposed seasonal allocation methodology as reasonable and appropriate, while rejecting Duke's use of future "Tranche 4" solar data as not reflective of current conditions of installed solar on the DEC and DEP systems. Accordingly, the Commission properly weighed the evidence put forth by SACE/CCL and JDA/SCSBA regarding Duke's underlying Resource Adequacy and Solar Capacity Value Studies utilizing LOLE data, and found that substantial evidence in the record supported ORS witness Horii's proposed seasonal allocations as most accurately reflecting Duke's avoided capacity costs based upon current conditions. The Commission's determination to adopt ORS witness Horii's position is based on a comprehensive evaluation of the record evidence put forward by all other parties, through which it weighed their proposals and determined that the evidence and position put forward by ORS witness Horii was more persuasive and better reflective of the actual avoided capacity value on the DEC and DEP systems today. The Order's findings and conclusions on this issue are also fully consistent with the Power Advisory Report's independent assessment of the evidence and recommendation to the Commission to adopt ORS witness Horri's position on this issue, and not SACE/CCL's, SCSBA's or Duke's.

Based upon the entire record in this proceeding, the Commission therefore affirms the approval of ORS witness Horri's recommended 99%/1% winter/summer seasonal allocation for DEP and 70%/30% winter/summer seasonal allocation for DEC.

E. The Commission clarifies that Duke should rely upon updated inputs to the calculation of both avoided energy rates and avoided capacity rates for Large QFs.

JDA/SCSBA seek reconsideration of whether the Commission's Order finds that it is appropriate for DEC and DEP to incorporate the most up-to-date inputs under the approved peaker methodology in calculating either only avoided energy costs or both avoided energy and avoided capacity costs for QFs above 2 MW not eligible for the Companies' Standard Offer tariffs ("Large QFs"). JDA/SCSBA Petition, at 33. JDA/SCSBA contend that if the Commission maintains its original ruling that updated inputs should be used to calculate Large QF avoided cost rates (which JDA/SCSBA assert they do not oppose), then Duke should also update the inputs to its calculation of avoided capacity rates for Large QFs in addition to the avoided energy rates. *Id*.

Duke's Response states that the Companies agree with JDA/SCSBA's position and understand the Order to require Duke to update inputs to both the avoided capacity and avoided energy rates in calculating up-to-date avoided cost rates for Large QFs. Duke Response, at 29-30. In support of this position, Duke explains that the Companies' initial proposal was to include both the most up-to-date avoided energy and avoided capacity inputs consistent with each utility's most recently filed IRPs in calculating Large QF's avoided cost rates. Duke's testimony on this issue was addressed in the Order. *Id.* at 30, citing Order No. 2019-881(A), at 78-79 (citing Tr. Vol 2, at 630.37). Duke's Response also contends that the Commission's discussion of the evidence in the record and the Order's findings and conclusions does not suggest that the Commission intended to deny Duke's proposal to update the inputs for both the Companies' avoided capacity and avoided energy cost rates to ensure they remain accurate over time. Duke Response at 30, citing to Order No. 2019-881(A), at 79-82. Duke therefore submits that the Commission's Order approves Duke's utilization of both updated avoided energy and updated avoided capacity inputs to reflect future

changes to the Companies' resource plans consistent with DEC's and DEP's most recently-filed IRPs in calculating the avoided cost rates for Large QFs. *Id.*

Having reviewed the record evidence in this proceeding, the Commission grants JDA/SCSBA's request for reconsideration on this issue. As explained in Duke's Response, the Companies' proposal was to provide the most up-to-date inputs for both avoided energy costs and avoided capacity costs in calculating avoided cost rates for Large QFs. Duke Response, at 29-30. No parties contest this proposal. Additionally, the Order recognizes the Power Advisory Report's findings that providing the most up-to-date inputs "ensures that the avoided cost rate reflects current assumptions and avoids the risk of stale avoided costs, which can be more significant for a large QF." Order No. 2019-881(A), at 82.

Based upon the foregoing, the Commission finds that substantial evidence exists in the record to support clarifying the Order in response JDA/SCSBA's request for reconsideration on this issue. The Commission finds and concludes that Duke should routinely update its inputs for both avoided energy and avoided capacity costs based upon each Company's most current integrated resource planning assumptions and forecasts when calculating avoided energy and capacity cost rates available to Large QFs.

F. The record supports adjusting DEC's avoided capacity rates to reflect ORS witness Horii's corrected CT Fixed Rate Charge for DEC.

Duke's Petition requests the Commission reconsider DEC's avoided capacity rates to reflect the corrected 9.831% Fixed Charge Rate supported by ORS witness Horii during the hearing. In support of this request, Duke explains that in calculating the Companies' avoided capacity rates, ORS witness Horii argued that DEC should increase its CT Fixed Charge Rate by assuming a 20-year economic life for the CT unit as opposed to the 35-year economic life used to calculate the avoided capacity rates filed by Duke. Duke Petition, at 6-7, *citing* Tr. Vol. II, at

525.13-14. Duke further explains that, at the hearing, Mr. Horii made a correction to his pre-filed direct testimony and indicated that his proposal to adjust the CT economic life to 20 years for DEC "increased the CT Fixed Charge Rate from 7.635% per year to 9.831% per year," not 9.931% per year as initially presented in his pre-filed direct testimony. *Id.* citing to Tr. Vol. II, at 521; 525.14, ln. 3-5.

The Order initially relies upon ORS witness Horii's corrected testimony reflecting the 9.831% Fixed Charge Rate and expresses the Commission's intent to modify DEC's avoided capacity rates to reflect the Fixed Charge Rate methodology "put forth by ORS witness Horii." *Id.* at 7, citing to Order at 94, 101. However, the DEC avoided capacity rates ultimately approved by the Commission in Ordering Paragraph 3 are calculated based upon ORS witness Horii's prior, uncorrected testimony and, therefore, reflect a computational error in the CT Fixed Charge Rate. *Id.* at 7. The Companies request the Commission correct DEC's avoided capacity rates to reflect the corrected 9.831% Fixed Charge Rate supported by Mr. Horii at the hearing.

The ORS concurred with Duke's request to adjust DEC's approved avoided capacity rates to reflect the corrected CT Fixed Charge Rate supported by ORS witness Horii. *See* ORS January 22, 2020 Letter in Response to the Petitions for Reconsideration of Order No. 2019-881(A), at 2. No other party opposed Duke's request for the Commission to make this correction.

Having reviewed the record evidence in this proceeding and Duke's Petition, the Commission grants Duke's request to reconsider the avoided capacity rates for DEC to reflect the corrected 9.831% Fixed Charge Rate input supported by ORS witness Horii at the hearing. No parties dispute this inadvertent computational error and ORS supports adjusting DEC's avoided capacity rates to rely upon the corrected 9.831% figure. Based upon the foregoing, the Commission approves the corrected Fixed Charge Rate of 9.831%, as supported by DEC and

agreed to by ORS, and approves the corresponding 10-year avoided capacity rates for DEC, as follows:

10-Year Avoided Capacity Rates – Distribution (20 Year CT, $/kWh)	Rates Approved in Ordering Paragraph 3 Using Fixed Charge Rate of 9.931%	Rates Using Witness Horii's Corrected Fixed Charge Rate of 9.831%
Summer On-Peak	0.0330	**0.0327**
Winter AM On-Peak	0.0394	**0.0390**
Winter PM On-Peak	0.0131	**0.0130**

CONCLUSION

IT IS THEREFORE ORDERED:

1. Petitions for reconsideration or rehearing of Order No. 2019-881(A) are denied, except as specifically adopted herein.
2. The Commission declines to strike portions of the Power Advisory Report as requested by Duke.
3. The Commission declines to rehear or reconsider its discussion and conclusions regarding the risks and benefits applicable to utility-owned generation and third-party owned renewable generation in the Commission's implementation of Act 62.
4. The Commission declines to rehear or reconsider the rejection of JDA/SCSBA's proposal to incorporate the cost estimate of an aeroderivative CT unit when calculating the Companies' avoided capacity rate.
5. The Commission declines to rehear or reconsider the Order's adoption of ORS witness Horii's recommended seasonal allocation of capacity value.

6. The Commission clarifies that it is appropriate under Order No. 2019-881(A) and this Order on Reconsideration and Rehearing for DEC and DEP to incorporate the most up-to-date inputs to the avoided energy and avoided capacity rates to reflect future changes to the Companies' resource plans consistent with DEC's and DEP's most recently-filed IRPs in calculating the avoided cost rates for Large QFs
7. Order No. 2019-881(A) is hereby amended to reflect the corrected 9.831% CT Fixed Charge Rate for DEC and the corresponding 10-year avoided capacity rates initially presented in Ordering Paragraph 3 shall be adjusted for this correction, as presented in this Order.
8. DEC shall file updated tariffs reflecting the updated avoided cost rates approved in this Order on Reconsideration and Rehearing within 30 days.
9. This Order on Reconsideration and Rehearing shall remain in full force and effect until further order of the Commission.

BY ORDER OF THE COMMISSION:

_____
Comer H. Randall, Chairman

_____
Florence P. Belser, Interim Vice Chairman

(SEAL)